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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3788 of 2007
Date of decision: 20.12.2007

Ramesh Chander alias Ramesh Kumar

...Appellant

Versus

Sant Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

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Present: Mr. Jatinder Kumar Kamboj, Advocate for the appellant.

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RAJESH BINDAL, J.

The defendant is in second appeal before this Court against concurrent finding of fact by both the Courts below whereby suit filed by the respondent/plaintiff for mandatory injunction directing the appellant to hand over vacant possession of shop No. 12, Main Bazar, Indri, District Karnal, was decreed.

The case set up in the plaint was that property in dispute was purchased by respondent/plaintiff vide sale deed dated February 1, 2000, registered on February 2, 2000 from Municipal Committee, Indri. The appellant/defendant being Bhanja (sister's son) of the respondent/plaintiff and being in urgent need of accommodation to start his business approached him with a request to allow him to use the shop in question as a licensee. The suit was contested by the appellant/defendant.

It is further pleaded that earlier appellant filed a suit for permanent injunction against respondent Municipal Committee, Indri

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restraining it from selling plot in question to the respondent and for mandatory injunction directing the Municipal Committee, Indri to transfer the same in his favour. This suit filed by the appellant was dismissed vide judgment and decree dated December 21, 1999 holding therein that present appellant was merely in possession of the property as licensee and he was not entitled for transfer of the property. Alongwith this the suit filed by respondent for permanent injunction restraining the Municipal Committee from transferring the plot in dispute in favour of the appellant was decreed. The finding of the learned Court below in the earlier litigation holding the appellant to be a licensee in the shop were upheld in the appeal.

When inspite of various requests, appellant did not deliver the vacant possession of the shop to the respondent, necessity to file the present suit arose. The same was contested by the appellant/defendant by raising the plea that after earlier litigation, the matter was compromised between the parties and now he was in possession of the shop as a tenant and entire arrears of rent had already been paid to the respondent. This fact was denied by the respondent though it was stated by the appellant that there were 5-7 persons present when the compromise was effected but still he did not know their names. The compromise was not even got registered with any Deed Writer. The same was signed only by his two brothers as witnesses. The agreement was disbelieved by the Courts below for the reason that even though prior to that notice for handing over vacant possession of the shop had been issued by the respondent to the appellant and infact the present suit had also been filed but this does not find mentioned in the agreement. One of the alleged witnesses to the agreement (brother of the appellant) was produced by appellant in his evidence to support the plea but was disbelieved being an interested witness. There is no good reason forthcoming from the pleadings of the parties as to why respondent would enter into an agreement with the appellant to rent out the shop in question to him once admittedly families have bitter relations and on earlier occasion, the appellant was creating all type hurdles in sale of site by the Municipal Committee, Indri in favour of respondent. The findings recorded by both the Courts below are plain and simple findings of fact,

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which cannot be held to be perverse.

No substantial question of law arises in the present appeal.

The appeal is, accordingly, dismissed.

December 20 , 2007 **(Rajesh Bindal)**
Pka **Judge**